IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10773 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

MANGALDAS B PATEL

Appearance:

MR HS MUNSHAW for Petitioner

MR RV DESAI for Respondent

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/08/2001

ORAL JUDGEMENT

#. Rule. Mr.RV Desai, waives service of rule for the respondent. By consent of the parties, the matter is taken up for final hearing today.

#. The petitioner - Corporation has challenged the award

passed by the Labour Court, Ahmedabad dated 7.4.2000. By the impugned award passed in Reference (LCA) No.613/95, the Labour Court has partly allowed the reference by awarding reinstatement in favour of the respondent-workman with full back-wages. The Labour Court while exercising the powers under section 11-A of the Industrial Disputes Act has substituted the penalty of dismissal by withholding of five increments with future effect.

#. It is argued by Mr.Munshaw that the respondent is in the habit of remaining absent and that he had remained absent for 66 days between 1.4.1992 to 31.3.1993 and because of the said misconduct of remaining absent without taking prior leave, he was dismissed from service. Mr.Munshaw further submitted that, after the petitioner was chargesheeted, regular departmental inquiry was initiated and the charge against him regarding remaining absent without leave is proved and that in past also, he remained absent for 23 times and was subjected to some minor penalties.

#. Mr.Desai, learned advocate for the respondent-workman on the other-hand argued that so far as the present incident is concerned, the respondent - workman was sick and that he had also submitted medical certificate regarding his sickness and the statement to that effect was also made before the Labour Court which is incorporated at page 22 in the award of the Labour Court.

#. Mr.Desai submitted that the respondent-workman will be more careful in future and he will not proceed on leave without submitting leave report unless there is a grave emergency.

#. Mr.Desai further submitted that, considering the fact that the Labour Court has ordered to withhold five increments with future effect, this is not a case in which the respondent - workman is required to be paid 50% back-wages. In his submission, 70 % back-wages should be paid to the workman.

#. It is required to be noted that, the Labour Court has come to the conclusion that, no particular questions were asked to the respondent-workman during the inquiry and the expression of the workman was also not taken into consideration. It was, therefore, found that the findings of the Inquiry Officer are defective. The said observations of the Labour Court are at page 23 of the compilation. The Labour Court, further came to the conclusion that this was not a case in which dismissal

order is required to be passed. Therefore, while exercising the powers under section 11-A of the Industrial Disputes Act, the Labour Court came to the conclusion that, penalty of dismissal is required to be substituted with the penalty of withholding of five increments with future effect and accordingly, the Labour Court set aside the order of dismissal and substituted the said order by withholding of five increments with future effect.

#. In the facts and circumstances of the case, in my view, the said view of the Labour Court is absolutely just and proper, apart from the fact that explanation of the respondent-workman about the sickness was not taken into consideration by the Inquiry Officer. Looking to the totality of the facts and circumstances of the case, it cannot be said that the Labour Court was not justified in exercising the powers under section 11-A of the Industrial Disputes Act. Therefore, in a petition under Article 227 it cannot be said that the Labour Court has committed any error of law or of jurisdiction in passing the impugned award.

#. In my view, therefore, award of the Labour Court is not required to be interfered with by this Court. It cannot be said that the maximum penalty of dismissal was required to be passed against the workman. Mr.Munshaw, however, submitted that, this is not a case in which 100% back-wages are required to be given to the concerned workman. Considering the fact that the respondent-workman remained absent without leave for sometime and in the past also, he remained absent without leave, while upholding the penalty of withholding of five increments with future effect, in my view, the respondent-workman should also to be subjected to further penalty of withholding of 50% back-wages. I agree with Mr.Munshaw that this is not a case in which 100% back-wages are to be awarded to the respondent-workman. In that view of the matter, I modify the award of the Labour Court to the aforesaid extent and instead of 100 % back-wages, the respondent-workman will be entitled to 50% back-wages only. The effect of this order is that the respondent workman will be subjected to the penalty of withholding of five increments with future effect as well as he will be entitled to 50% back-wages during the intervening period. The award of the Labour Court is accordingly modified to the aforesaid extent. Whatever amount which is required to be paid to the respondent-workman on the basis of this order, may be paid to him within one month from today. Rule is made absolute partly to the aforesaid extent with no order as

to costs.

(P.B.Majmudar,J)
(pathan)